IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.642 OF 2005
IN
NOTICE OF MOTION NO.1287 OF 2005
IN
SUIT NO.1183 OF 2005

Nalini Himatlal & ors. Appellants.
vs.
Malad Kandivali Education Society
& ors. Respondents

Mr.D.D.Madon with Mr.Ketan Parekh i/b.M/s.Purohit & Co. for the appellants.

Mr.H.C.Mehta with Mr.Sualeh Nagvadaria i/b. M/s.Mehta & Co. for the respondent no.1.

Mr.Ahmed for respondent nos. 2 to 15.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 14th November 2005

P.C.

Heard Mr.D.D.Madon, the learned senior counsel for the appellants and Mr.H.C.Mehta, the learned counsel for the respondent no.1 and Mr.Ahmed, the learned counsel for the respondents 2 to 15.

2. The rejection of notice of motion by the learned motion Judge does not call for any interference at our end. It was submitted before us, as was submitted before the learned motion Judge, that plaintiffs had no objection to the construction work being commenced or completed in the suit property. The only controversy is with regard to the name being put over the building being constructed over the suit land. It appears from

the record that the new construction has been carried out in the subject property from time to time and at no point of time until the present Suit was filed, the plaintiffs raised any objection to the different names being given to the buildings constructed over the subject land.

3. In the circumstances, we find that no case for grant of interim relief is made out and the learned motion Judge cannot be said to have erred in declining to grant the same.

4. Appeal is dismissed in limine.

5. We, however, expedite the hearing of the Suit. The plaintiffs are given liberty to move the learned trial Judge for fixing the calendar for trial of the Suit.

6. We also direct the respondent-Society to give an undertaking within two weeks from today that in the event of Suit being decreed, they would put the name on the buildings provided in the agreements dated 8th July 1985 and 28th April 1987.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)